

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**FISHER & COMPANY, INC.,
FISHER & COMPANY, INC.
EMPLOYEE BENEFIT PLAN
FOR HOURLY EMPLOYEES,
AND FISHER & COMPANY, INC
EMPLOYEE BENEFIT PLAN
FOR SALARIED EMPLOYEES,**

Plaintiffs,

vs.

No. 13-CV-13221
Hon. Gerald E. Rosen

**BLUE CROSS AND BLUE
SHIELD OF MICHIGAN,**

Defendant.

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**OPINION AND ORDER GRANTING PLAINTIFFS’
MOTION TO LIFT STAY**

On July 26, 2013, Plaintiffs filed this lawsuit, alleging violations of the Employee Retirement Income Security Act of 1974 (“ERISA”) and state law concerning certain administrative fees that Blue Cross and Blue Shield of Michigan (BCBSM) allegedly misappropriated while administering its self-insured employee benefit plan. This is one of approximately fifty such “hidden fees” cases filed by various individual plaintiffs in this District alleging nearly identical claims against BCBSM. Following the first bench trial among those cases, Judge Roberts

entered judgment for plaintiffs and against BCBSM. *Hi-Lex Controls, Inc. v. BCBSM.*, 2013 WL 2285453 (E.D. Mich. May 23, 2013). BCBSM filed a timely appeal in that matter. Awaiting the results of that appeal, BCBSM moved to stay the litigation in many of the related actions, including this one. Def.'s Mot. to Stay Pending Appeal, Dkt. # 11. Defendant also subsequently filed a Motion to Dismiss. Def.'s Mot. to Dismiss, Dkt. # 16. This Court granted the first motion, ordering that the matter be stayed "pending resolution of the *Hi-Lex Controls* matter, including any appeal and proceeding on writ of certiorari to the United States Supreme Court." Op. and Order Granting Def.'s Mot. to Stay, Dkt. # 17, at 6. The Court denied as premature, however, Defendant's Motion to Dismiss. *Id.* at 5.

On May 14, 2014, the U.S. Court of Appeals for the Sixth Circuit issued its opinion in the *Hi-Lex Controls* matter, affirming the district court's judgment. *Hi-Lex Controls, Inc. v. Blue Cross Blue Shield of Mich.*, 751 F.3d 740 (6th Cir. 2014). BCBSM timely filed a petition for a writ of certiorari to the United States Supreme Court on August 12, 2014, and the Supreme Court denied the petition on October 20, 2014. *Blue Cross Blue Shield of Mich. v. Hi-Lex Controls, Inc.*, cert. denied, 83 U.S.L.W. 3109, 2014 WL 3965217 (U.S. Oct. 20, 2014) (No. 14-168).

Currently before the court is Plaintiffs' Motion to Lift Stay. As noted in the Court's order staying the litigation, "any party may file a motion to reopen this

matter upon the issuance of a mandate by the Court of Appeals.” Op. and Order Granting Def.’s Mot. to Stay, Dkt. # 17, at 6. As that requirement is now met, and all possible routes of appeal in the *Hi-Lex Controls* matter are now exhausted, the Court agrees that the matter should be reopened. The case is now ripe for motion practice, and Defendant may renew its no-longer-premature Motion to Dismiss if it so chooses.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs’ Motion to Lift Stay (Dkt. # 19) is GRANTED and that this matter is REOPENED.

IT IS SO ORDERED.

Dated: November 5, 2014

s/Gerald E. Rosen
Chief, Judge, United States District Court

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 5, 2014, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135